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File No. O Torts/41

Lenz **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions Regarding Torts

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File No. O Torts/41

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Ans.
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By the customary law of India, Government has power to regulate in the public interest in connection with the collection, retention and distribution of water of rivers and streams in natural channels, provided that it does not thereby inflict sensible injury on other riparian owners and diminish the supply they have hitherto utilized. The maintenance of Irrigation works is a duty cast upon Government and the rights and liabilities of Government in connection with the irrigation works are not commensurate with those of private riparian proprietors. They are analogous to those of persons and corporations on whom statutory powers have been conferred and statutory duties imposed (see Fisher Vs Secretary of State, 32 Mad. 141).

"It is now thoroughly established" says Lord Blackburn in Geddis Vs. Bann Reservoir 10, (1878, 3 A. . 430) "that no action will lie for doing that which the legislature has authorised, if it be done without negligence, although it does occasion damages to any one; but an action does lie for doing that which the legislature has authorised if it be done negligently. I think that if by reasonable exercise of the powers either given by Statute to the promoters, or which they have at Common Law, the damage could be prevented it is within this rule 'negligence" not to make such reasonable exercise of their powers" (see Coulson and Forbers on Waters and Land Drainage, p. 144; of R. L. A's opinion No. 1652, dated 13th February 1940). Government has also got the statutory power to stop water supply by closing a canal for purposes of repairing it. (cf. section 28 of the Bombay Irrigation Act, 1879) and every intended closure as required, as far as may be practicable to be notified at least 8 days in advance (see rule 39 of the Bombay Canal Rules, 1934) but this restriction relating to notification is intended for the benefit of persons who are entitled to the supply of water from the canal. There

There is no provision either in the Irrigation Act or the rules thereunder requiring Government to give a notice of any proposed closure of a canal to the down stream riparian owners. Consequently the ryots of the villages of Thakores of Hapa and Tajpur who are alleged to have suffered damage owing to the submergence of their crops due to the flow of water over the weir were, in law, not entitled to any notice of the closure of the canal between 20th March 1934 and 22nd March 1934 for clearing it of the Shegal growth. No negligence in effecting the closure of the canal has been even alleged and the damage to the crop was not in any way due to negligence on the part of the officers of this Government. If follows therefore that the ryots of the villages of Thakores of Hapa and Tajpur are not in law, entitled to any compensation from the Bombay Government for the damage done to their crops.

2. Even in equity they do not seem to have any valid claim. It appears from the letter at p. 51 ante that letting water down the weir during the summer to enable clearance of the canal of the 'Sheval' growth was not an innovation adopted in the year 1934 alone but has been practised for many years even before 1927 and it appears that a warning was duly given by the Executive Engineer, Ahmedabad, that damage would be avoided if the cultivators raised their crops sufficiently away from the midstream. If those cultivators raised crops in 1934 in the midstream ignoring the earlier warnings, they did so at their own risk and cannot hold Government responsible for the damage.

Moreover a specific intimation of the closure of the canal from 20th March 1934 till 22nd March 1934 was given by the Executive Engineer on the 9th March 1934 to the

9th March 1934 to the Deputy Political Agent, Sadra Division, Sadra, requesting him to inform the parties concerned to take necessary precautions against the submergence of their crop.

But there was some delay in the transmission of the intimation for which Government could not be responsible. Also the damage to the crop was due partly to the opening a day earlier of the sluices of the masonry dam constructed by the Idar State below the Government weir.

sd/-

Remembrancer of Legal Affairs.

U. R. to the P. W. D. No. 1284 dated the 11th February, 1941.

MRR.

Office of the R. L. A.

It appears that the Provincial Press Advisory Committee is formed by the convener appointed by the Standing Committee of the All India Newspaper Editor's Conference. The convener of the committee has, therefore, an interest in communicating the minutes of the meetings of the Committee to the President of the Standing Committee and the President of the Standing Committee has a corresponding interest in receiving the same.

The communication will, therefore, be on a privileged occasion and will give no cause for any action for damages(Ratanlal's Law of Torts, 11the Edition, page 171). The question whether it will be punishable as an offence under section 500 of the Indian Penal Code will depend on whether it does not fall within any of the exceptions to section 499 of the Code, and the question ~~xhx~~ whether it does or does not fall within any of the exceptions to section 499 will depend ineach case on the nature of the communication made. However as according to the procedure suggested in the H. D. note dated 1-8-41, with which a(H) has agreed, the minutes of the meetings of the Bombay Provincial Press Advisory Committee will be marked "confidential" and communicated to the President of the Standing Committee by the convener of the Committee and not by Government, the question whether any action will lie against Government for making the communication does not arise.

sd/-,
Remembrancer of Legal Affairs.

U. O. to H. D. (special) No. 161-P. confl. dated 16th August, 41.

MRR.